

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Closed Captioning and Video Description
of Video Programming

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MM Docket 95-176

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NOTICE OF INQUIRY

COMMENTS OF THE SATELLITE BROADCASTING
AND COMMUNICATIONS ASSOCIATION

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**COMMENTS OF THE SATELLITE BROADCASTING
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I. INTRODUCTION.

The Satellite Broadcasting and Communications Association ("SBCA") is pleased to submit to the Commission its comments in the above-referenced Notice of Inquiry.

The SBCA is making its views known in this proceeding because so many segments of the Direct-To-Home satellite industry ("DTH") will be affected when the Commission promulgates its rules, as mandated by the recently enacted Telecommunications Act of 1996, concerning the creation and distribution of programming containing closed captioning and performs its study on the use of video description.

In these comments, SBCA will make the following points:

- 1) DTH satellite service providers retransmit intact the closed captioning contained in television programming of all types;**

2) The Commission is urged to exclude live programming, premium television services, and previously published programming from any mandatory closed captioning requirements; and

3) Program producers are the proper entity for adding at the production source closed captioning for the programming they make for television.

The SBCA is the national trade association for the DTH satellite industry which has become a meaningful new competitor for consumers to choose from in the video market place. This growth is due to the cutting edge quality of the DTH consumer distribution technology and has also been countenanced by the Commission's policies of diversity and choice in television programming. The SBCA represents the major satellite manufacturers and operators; DTH service providers; the major program services, including basic, premium and pay-per-view; equipment manufacturers and distributors; and more than 2,000 retail dealers who are the point of sale to consumers.

The Commission in its NOI refers to DTH service providers as non-broadcast, non-cable services which deliver programming containing closed captioning from outside program providers. DTH is purely a program delivery system. Up to now, it has not participated, as a transmission service, in the creation of closed captioned television product, outside of retransmitting intact the closed captioning already encoded in the programming it delivers to subscribers.

In any event, the DTH industry could be dramatically affected by any new rules which the Commission may seek to impose in the future concerning closed-captioning and video description. In the first instance, the major programmers who offer subscription services to DTH consumers may be asked to bear significant obligations in the implementation of any mandatory regulations regarding the creation of program material containing these television viewing features. In addition, DTH service providers may also be required to comply with certain rulings in connection with the transport of the programming. Thus, we take this opportunity to actively represent the views of our members in this proceeding to help the Commission grasp the market impact of the proposals which it may soon be promulgating as rules.

The SBCA commends the Commission for its forward thinking in dealing with such progressive program elements as closed captioning and video description. The increasing importance of television reception for news and entertainment, coupled with the use of computers, telecommunications networks, satellites and other features which collectively have been termed the National Information Infrastructure, should be made accessible to any U.S. consumer. Technology, whether it be wire or wireless, now makes it possible for all households to avail themselves of video programming. Disabled viewers are an integral part of that market place, and we recognize the importance of serving this important consumer segment.

II. DTH IS A COMPETITIVE DISTRIBUTION TECHNOLOGY.

While The dynamics of the DTH television programming market place may appear complex on the surface, The business of both offering programming and delivering it to consumer households is very basic: the industry seeks new subscribers in order to create further value to its operations and in the end reward its shareholders for their risk of capital. The drive to gain subscribership provides the impetus for innovation in the market place, particularly as competition between distribution technologies for viewers intensifies.

It is important to discuss at this point the context in which the DTH satellite industry is able to provide special program features to disabled television consumers. The nascent competitiveness of DTH service is an important component in this mix. While the venerable C-Band systems have been in use since 1980, the new medium-power and high-power DBS systems have the promise of revolutionizing in a very short period of time how U.S. households receive television programming today. At the end of 1995, the SBCA's research and data base program SkyTRENDS¹ reported 2.2 million DBS subscribers and 2.3 million C-Band subscribers. The resulting 4.5 million total DTH subscribers represents approximately 5 percent of U.S. television households.

¹SkyTRENDS is a joint venture between the SBCA and its Denver-based partner, Media Business Corp. The project publishes a monthly news letter, SkyREPORT, sponsors the SkyFORUM financial symposia, and markets the Effective Competition Reporting program designed to assist cable operators in determining the level of DTH service competition by subscriber in their service areas.

In that vein, it is incumbent on the DTH industry to insure that it can succeed both economically and competitively while at the same time being capable of fulfilling the viewer obligations mandated by both the Commission and the Telecommunications Act of 1996 now that it has become law. This observation does not suggest that the DTH industry will not live up to the rules promulgated by the Commission, nor that we are not desirous of increasing the accessibility of popular television programming to consumers with hearing or sight disabilities. It is, however, a circumstantial factor in assessing the impact of any new obligations the industry may have to comply with in light of its current competitive state with larger, more established video distribution providers.

III. CLOSED CAPTIONING.

As of the writing of these comments, the Congress has passed, and the President has signed into law, the Telecommunications Act of 1996 which mandates under **"Sec. 713. VIDEO PROGRAMMING ACCESSIBILITY"** that, "video programming first published or exhibited after the effective date of such regulations is fully accessible through the provision of closed captions" and applies that requirement to "video programming providers or owners." There is no difference today in the closed captioned programming carried by DTH satellite services and programming which is closed-captioned at the source. It is one and the same because the programming closed captioned at the source is transmitted intact in both analog or digital satellite data

streams. In fact, even without Congressional mandate, the television market place on its own has witnessed significant increase in closed captioning by video programmers.

With regard to satellite transmissions, the architecture of both digital and analog formats is designed to provide for carrying closed captioning. In the analog mode, a NTSC television signal is carried in the satellite data stream in its NTSC format which includes the Vertical Blanking Interval where the closed captioning is contained. The closed captioning information itself comprises only a very small part of the data stream and, as such, requires only a minimal power boost for carriage.

In digital format, closed captioning information constitutes approximately 1/10th of 1 percent of a 100,000-bit transmission stream carrying the television signal. (The information for activation of the V-chip will be carried on the same VBI line as closed captioning, but we do not anticipate that the additional data capacity will have an effect, if any, on satellite transmissions.) All closed captioned pay-per-view, off-air broadcast signals carried on satellite, satellite-delivered programming and PBS broadcasts carrying closed captioning are included in satellite carriage. In addition, some programmers require in their affiliation agreements with service providers that closed captioning be retransmitted intact.

In view of the broad technical and information capacity of a generic satellite data stream, we do not believe that technical standards in this area are necessary. The industry transmits the information intact today without any major dislocation in channel capacity. However it is possible that in the future some adjustments in transmission capacity may be required if all programming is required to carry closed captioning at all times. But we do not view this possibility as requiring the promulgation of technical standards in any event.

Another major benefit the SBCA anticipates in the expanded use of closed captioning is its market place appeal beyond facilitating television viewing for the hearing impaired. Closed captioning appears to have utility for all consumers interested in viewing television programming without sound (mute) while, for example, performing other tasks such as speaking on the telephone, working, or engaged in other pursuits. It also lends itself to non-residential settings such as restaurants, airports and other public places where noise makes it difficult to hear the audio portion of a television signal. In such a context, it would have broader market appeal.

The utility and potential of closed captioning, even without Commission or Congressional mandate, has become evident in the continued expansion of closed captioning by the major television programmers. A survey of some of the SBCA's program members in connection with this proceeding indicates that the addition of closed captioning to television programming has expanded rapidly within the last five

years simply by virtue of market place forces. The use of closed captioning appears to have doubled in the period 1990-1995, with over 50% of prime-time programming, if not more in some instances, now making it available to viewers.

IV. COST ISSUES.

While the costs cited in the NOI appear to be consistent with the cost information made available to the SBCA, as more programming becomes close-captioned, programmers are seeking more efficient ways to offer the feature. They are currently exploring numerous alternatives, including in-house production, the application of new closed captioning technologies, new software research and development to accommodate the different types of programming being made available, as well as new initiatives with outside closed captioning vendors in these areas.

Both the NOI and the Act are appropriate in raising the matter of costs for closed captioning with regard to the impact of those costs on program producers. In that regard, they provide for possible relief from some of the mandate for closed captioning on the basis of undue economic burden - a provision which we believe helps to add some balance to the consideration of this issue.

V. LIVE EVENTS, PREMIUM PROGRAMMING, AND PREVIOUSLY PUBLISHED PROGRAMMING.

Programmers may be sensitive to the increased costs entailed in close captioning live events, premium television programming, and previously published programming, and

in such instances those costs may constitute an undue financial burden on the programmer. Much live programming, for example, comprises sporting events which with few exceptions are visually explanatory without the use of other aids. Adding captioning simultaneous with the event is expensive and can be mechanically and logistically difficult.

By the same token, closed captioning previously published programming, i.e. library programming which is not widely viewed in any event, would represent a financial burden which may not be appropriate in relation to either the value or the consumer viewership of the product. This type of programming, which does not command substantial viewership and which would thus occupy a less prominent place on the television schedule because of its reduced viewing value, would subsequently raise the cost of the program to the consumer in the event that it, too, would be required to be closed captioned.

Moreover, the SBCA also believes that premium television services should be excluded from any closed captioning requirements. Unlike non-premium services, premium programming is purchased separately by consumers for a fee. Many of these services already close caption a significant portion of their programming, and if there is significant consumer demand, the market place will provide the appropriate incentive for premium services to increase their closed captioning. In any event, we recommend that the Commission take into account the fact that subscribing to a

premium service for a fee is indicative of a selective decision on the part of a viewer to receive that service. Thus we recommend that this class of programming should be exempt from the rule and permitted to increase closed captioning as the market demands.

We understand the Commission's desire, however, to ensure the maximum accessibility of all types of television programming to all viewers. We will be in a much better position to offer more productive and concrete proposals in this area at the time the Commission issues its NPRM on closed captioning pursuant to the mandate of the Act. But because of the vast increase in programming to be closed captioned, and the associated cost of complying with the new rules the Commission must now promulgate, SBCA urges the Commission to consider a prospective regime for applying its new rules. Programmers will comply to the best of their ability however they will need a suitable amount of time to make appropriate business arrangements and to formulate their costs and distribution plans in an orderly manner.

VI. VIDEO DESCRIPTION.

SBCA members, both programmers and service providers, have had little experience with the use of video description in their programming. Until now, the Second Audio Channel has been used to carry Spanish language programming for the most part. It appears that the DTH industry in general may have the potential for greater audio capacity than its competitors. However the Commission must make a serious

investigation into, first, the technical ramifications of a more widespread use of video description on distribution technologies of all types -- i.e., are there sufficient audio channels available on video tape formats, in-house routing and distribution systems, and terrestrial and satellite transmission systems to support multilingual and descriptive audio services; the demand and costs inherent in providing video description on a wider scale; and finally a closer examination of the benefits of video description in light of the substantial costs in making it available. We also suggest that the Commission address the issue of whether video description is the best approach to making television programming more accessible to the visually disabled, or are there other methods or technologies which would be both more efficient and cost-effective. Again, we hope to have more comments to offer in this regard at the time the Commission conducts its study in this area. However it is clear that video description constitutes a greater challenge to transmission and channel capacity (compared to closed captioning) to the extent that it requires greater bandwidth for the carriage of the necessary audio channel(s) containing the descriptive information.

VII. MANDATORY REQUIREMENTS.

SBCA believes that the ~~entity~~ which produces the video programming at the source be responsible for adding the closed captioning. In any event, "mandatory requirements" always connote that one party or the other will bear the financial and other burdens of putting into effect Congressional or Commission mandates. The NOI asks whether the mandatory requirements of producing closed captioning be "imposed on entities

that produce or distribute programming that is aired on television? Or should they be confined to the 'providers' of this programming, *i.e.*, broadcasters, cable systems, wireless cable, SMATV operators, direct-to-home satellite services, and local exchange carrier/video dialtone systems? Should *both* providers and owners/producers be subject to any mandatory requirements that might be adopted, with parties being allowed to allocate responsibilities in this area by private contract?" (para. 27)

Program producers adding closed captioning at the source of program production is the only logical alternative to mandatory requirements. In the first place, program producers, as the original creators of television product, hold ultimate control over programming, namely at the source. From the perspective of pure efficiency and lowest cost (but still not cheap in any event), closed captioning is most sensibly added as part of the production process where scripts and other necessary information is readily available. Furthermore, costs incurred at the source can be recovered more easily top down than, say, at the uplink (bottom up), and so be spread equally among all entities party to distribution.

By the same token, DTH service providers do not have under any circumstances the technical capability of producing closed captioning for the programming that it retransmits. Whether the provider is a C-Band satellite operator retransmitting analog services or an integrated KU-Band digital service provider, the mechanics of transmission and the technical configuration of the systems themselves make it virtually impossible for the captioning to be added after the programming has either

been created or prepared for television viewing by the producer. To add captioning by the service provider at the uplink is a futile effort with little or no economic efficiencies of any kind. In fact, if anything, requiring service providers to add closed captioning at the source of retail distribution (such as DTH, cable, etc.) would result in vast inefficiencies for all market place distributors as the identical program product would have to be closed captioned by all technologies as well as all competitors within each technology. Having said this, we are certain that the program producers, too, will have serious considerations regarding their ability to create captioning for all their programming.

This matter also raises an important non-technical issue regarding the copyright impact of adding closed captioning (or video description for that matter) to product owned and copyrighted by creators other than producers at the source. This, too, can only be addressed by the copyright holders themselves (if it is at all possible to physically locate the copyright holders of all the programming that is to be closed captioned!) In other words, we believe that the addition of closed captioning, or an audio description of the programming being displayed, brings into play new copyright elements which may not been widely addressed previously in the television program field.

VIII. CONCLUSION.

The Congressional mandate to the Commission to require closed captioning for all (or most) television programming has broad ramifications for all video distribution technologies, as well as producers and distributors of the programs. The DTH satellite industry envisions few obstacles to carriage of closed captioning information in either analog or digital formats, and, in fact, the information is already being carried intact by these systems. However it is our recommendation that the addition of closed captioning information be added at the source of the programming for the sake of efficiency and control factors inherent at the point of production.



Andrew R. Paul, Senior Vice President

**FOR THE SATELLITE BROADCASTING
AND COMMUNICATIONS ASSOCIATION**

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